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Boudreau, Paul E

To: Burger, David
Subject: RE: 12/7/05 Daily Briefing Excerpts

RELEASED IN FULL

From: Orlansky, Michael D
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To: Milovanovic, Gillian A; Wohfers, Paul; Hubler, Stephen A
Subject: 12/7/05 Daily Briefing Excerpts

Contrary to a note in the guidance package, there was a press briefing yesterday. About half of it was related to USG policy on treatment of detainees, including mention inter alia of the el-Masri case and the Secretary's meetings in Germany:

State Department Daily Press Briefing with Deputy Spokesman Adam Ereli
December 7, 2005 (excerpt)

Q So can we have - go to interrogation, the topic of the day. I don't want to dominate the - I think everybody wants to know.

MR. ERELI: Okay.

Q If the - how would you describe the secretary's remarks today, as an elaboration of existing policy, an extension of what she said at the airport, as a refinement? Pick your word. She covered ground she hadn't covered before, and some people think she's signaling some sensitivity and some shift. But of course, policy never changes, so.

MR. ERELI: Well, I think the secretary is stating as correctly and forthrightly as we can our policy.

Q But when did the policy change?

MR. ERELI: It's existing policy. Her statement is a statement policy, and it's been the U.S. policy.

Q How long has it been the U.S. policy for?

MR. ERELI: At least since the secretary said it.

Q (Off mike.) Can I follow up? (Laughter.) If this isn't a new - if what she said today is not new and that you follow international law, you follow the U.N. Convention on - against Torture, whether it's in the United States or out of the United States, why is the administration objecting to the language posed by Senator McCain prohibiting cruel and unusual and degrading punishment by - against any detainees by U.S. personnel, whether it's in the United States or out?

MR. ERELI: Yeah, I think we've also made clear, and the secretary made clear in her statement on Monday, that - and others have as well - that we are looking - the

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administration is looking to reach a mutual agreeable solution with the members of Congress on this issue. And I would have that to say in response to your question.

Q Is it because it's actual U.S. legislation? I mean, the - in the - when the U.S. signed the - or ratified the Convention on Torture, I think it says something to the effect of that the United States doesn't feel that the Convention on Torture - that it's bound by any - that it's bound by it. If U.S. legislation in the United States is against anything in the convention, or that U.S. interpretation of anything in the convention is against the U.S. Constitution, does the United States feel more bound by its own legislation than it does by any U.N. conventions or international obligations that it signs?

And that's why it's hesitant to pass any new legislation on this.

MR. ERELI: Well, when you ratify a convention, it becomes part of your domestic law - or maybe I shouldn't say that, because there might be some legal sophistications that I'm missing.

But I think the best way to understand that, best way to answer your question is to again look at the statement of record, which is the United States will be bound by or will follow U.S. law and international law and its international treaty obligations, which are legal obligations, and that those are the principles that will guide us in our actions on this issue and on other issues.

Q Why do you think it's so important for the secretary to clarify this position?

MR. ERELI: I think she was responding to questions.

Q But it became obvious that details of the German detainee and other issues, such as Murtha coming out speaking about the war and these situations - seems to have moved the secretary several times on this trip to have to deal with this question.

MR. ERELI: Well, as we've made clear - look, as we've made clear, this is an issue about which there's debate in the United States and around the world. And it's an issue about which there is debate because we're really on unfamiliar ground here, for everybody - unfamiliar ground in the sense that we are engaged in a struggle, engaged in a conflict with a new kind of enemy that doesn't - that is outside many of the norms and practices which the world has hitherto had to deal with. And in confronting that threat and in dealing with these actors, we have - again, we have found ourselves in uncharted territory.

So obviously there's a discussion about what is necessary, what is appropriate and how does that - how do we reconcile that with past practice and existing norms.

And the secretary's responses to your questions, legitimate and important questions, are, I think, a sincere attempt to try to participate in that debate and participate in that discussion and to present to you and help you work through how the U.S. government sees the problem, how we are working through the difficult choices that they present, and how we're trying to adapt, again, existing norms for past conflicts to new and unprecedented challenges.

Q Do you believe that Secretary of Defense Rumsfeld has placed Secretary Rice in a very sort of embarrassing light, where she has to explain the possibility of the military not behaving properly?

MR. ERELI: Absolutely not. I think Secretary Rice, President Bush, all - Secretary Rumsfeld, all the members of this administration have made it clear that we are engaged in a war, that there are those out there who are trying to kill Americans, who have killed and who remain bent on killing Americans, and that it is the first duty of any government to act to protect its citizens. And that's what all of us in the administration, I think, keep at the front of our minds every single day. And the point Secretary Rice is making and the point, I think, that the others are making is that we are going to do that in ways that are consistent with our laws, our values, our principles and our international obligations.

Q But why should people believe that, because we've seen Abu Ghraib, we've seen continuous positions of torture, more pictures, more - (inaudible) - more and more the administration being plummeted (sic) -

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MR. ERELI: Pummeled?

Q - pummeled with questions and - well, even worse - in the press regarding this situation that doesn't seem to change, it only seems to be revealed, and the American people may feel that they're being lied to.

MR. ERELI: Well, actually I think they're the same incidents being recycled and repeated, as opposed to new incidents. But I would have this to say in response. And again, the secretary spoke to it, I think, very forcefully on Monday.

We have our laws. We have our - those entrusted by the government to act on behalf of the people, whether they be diplomats or judicial officials or brave men and women in uniform, have instructions to act consistent with those laws. And the vast, vast majority of them every day do that with honor and dignity.

As in any system, there's not a system in the world where there are not going to be failures of individuals to conform to the laws and instructions and norms that they are entrusted and sworn to uphold.

Q But if they're not -

MR. ERELI: And - and when that happens, as it did in Abu Ghraib, the system is designed to act, to investigate, to find and to punish so that it - and to take actions so that it doesn't happen again, which was done in Abu Ghraib. So at Abu Ghraib or - or - or - or other instances show is that - that although we have laws, although we have instructions, although there are clear things that people are supposed to do and not supposed to do, if they're - when there are abuses and when things do go wrong, there's a way to deal with it. And I think that is an important lesson for anybody observing our system to know that we have laws, we follow them, but when there are problems we also have transparency and accountability.

Q Why do you think your European allies were so surprised, then, that you had hidden prisons, or there was discussions of these prisons and that Europeans seem to be quite taken back and that she has to explain this?

MR. ERELI: Well, again, there are - there are questions about how - there are questions about and examinations of the threat and how you respond to the threat. That is - that is healthy, that is necessary in a democracy and in open societies, and we're speaking about it openly.

Q But I'm talking about your European - your European leaders and allies. They - they were taken off guard, that she had to explain to them. We're not talking about here domestically, we're talking about her as a secretary of State who is out there doing diplomatic liaison.

MR. ERELI: Again, referring back to the secretary's statement on Monday, I think she addressed this very well in saying that we're engaged in a global war on terror, and we have partners that are working with us, and that we are engaged in a common endeavor. That includes Europeans who have been victims of the same kind of wanton terrorism that we have - the Spaniards, the British, the Italians - and that we have, I think, had a good and productive partnership in confronting the war on terror in all spheres: economic, political, military, law enforcement, and intelligence.

But, as in the United States, there is a debate in Europe and there are questions asked in Europe. That is as it should be. And we, as friends and partners and allies of the Europeans, and others who work - with whom we work in the war on terror, it's important to address those questions.

Q Adam, can I just -

Q Chancellor Merkel said on Monday that Secretary Rice did apologize for - or did say there were mistakes being made in the abduction - CIA abduction of the German citizen al-Masri. Later on it was reported that U.S. officials said Secretary Rice did never say that.

MR. ERELI: Yeah.

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Q Did Chancellor Merkel get that wrong? Did the secretary of State say there were mistakes being made in the case of Masri or not?

MR. ERELI: I think what's clear, if you look at the transcript from the press conference yesterday, was that if and when mistakes are made, corrective actions will be taken, and that we, obviously, respect the sovereignty of our friends and work with our friends.

The secretary also, I think - and it's important to underscore this - the secretary and Chancellor Merkel had an excellent meeting, that they - that it was - it was very positive, very cordial and very productive, and that they agreed on a broad agenda for both Germany and the United States in the bilateral relationship and in the transatlantic relationship; and that - and that with respect to all the issues, including this one, there was a real meeting of the minds.

And I think I'd just leave it at that because, frankly, I think more has been made of the specific issue that you raised than is necessary - than is warranted, and it detracts, frankly, from the very positive tone and substance of their meeting.

Q Can we talk about an inference here? If mistakes - perhaps she said if mistakes were made, we'll correct them. And could it be that the Germans inferred from that that she is acknowledging a mistake? And that you and she and the State Department are saying she was speaking in general terms: if mistakes were made, they would be corrected?

MR. ERELI: I would simply say that, you know, we and the Germans are very well knit up on this and that it's not an issue of discord or disagreement.

Q Well, I don't think that's true, Adam.

Q Adam, can I -

Q The Germans -

MR. ERELI: It is. I'm telling you.

Q Well, the Germans today are coming out and saying that she did say el-Masri was a mistake. Regardless of what you say up here, in Germany they're saying -

MR. ERELI: And I'm telling you that we - they had a good meeting. We are moving -

Q I believe that.

MR. ERELI: We are moving forward.

Q What we're talking about is whether she said it was a mistake. Regardless all of those -

MR. ERELI: I don't have anything more to add to what the secretary said on this issue publicly yesterday.

Q Not necessarily what the secretary said, but didn't yesterday the U.S. government say Mr. el-Masri is entitled to come to the United States if he wishes?

MR. ERELI: I did not see that statement. I would tell you that Mr. Masri tried to come to the United States. He was denied entry by Department of Homeland Security. He returned from where he came. He is required, if he wants to come back to the United States, to apply for a U.S. visa, after having been denied entry, and that if he applies, that visa will be adjudicated by U.S. consular officials.

Q Well, apparently yesterday the U.S. government said that if he wanted to come to the United States, he's free to come -

MR. ERELI: Yes.

Q - which means that there was a mistake in the first place. Don't you think so? Government officials on the road apparently -

MR. ERELI: Yeah.

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Q - told our people on the road that he was welcome to come. Can you not confirm that?

MR. ERELI: I would say that if he applies - my understanding is that if he applies for a visa, we would expect to be able to resolve this satisfactorily.

Q Can I just ask you - just as a point of information, just on - it was my understanding, as printed in The Washington Post and all the other commentaries I've read, that U.S. policy had been that torture restrictions apply to U.S. personnel only on U.S. soil. Is that an accurate characterization -

MR. ERELI: I think the accurate characterization is what the secretary said in Kiev today.

Q But you just said before, maybe in jest, beginning today.

MR. ERELI: No. Look, what the secretary said is existing U.S. policy. I'm not going to do a - forensics for you on all the discussions that have taken place on this issue. I think it's clear what the policy is. The secretary said it, and you can take it to the bank. (Cross talk.)

Q Of course what she said today - when she speaks, it is policy.

We're not asking for a history of interrogation. It's a very simple question. Until today, were the rules applicable only to interrogation in the United States, and as of today, have they expanded abroad? Or were they - did they always apply in the U.S. and abroad? That's all.

MR. ERELI: Yeah. And, frankly, I'm not going to - to - I can't describe for you the - and give you a timeline for all the discussions and consultations leading up -

Q Nobody's asking you to.

MR. ERELI: - and those - you know, if you want to look at the public record, look at the public record. But the policy stated by the secretary of State is existing U.S. policy.

Q Are you not aware - we're not asking for all the discussions. We're asking what was the policy up till today, and what the policy is from this day forward.

MR. ERELI: The policy of the United States - the policy of the United States was as - was, as was said repeatedly by the president, that we do not condone torture and we do not tolerate torture.

Q But do we commit torture on -

Q (Inaudible) - the United States -

MR. ERELI: Whoa, whoa, whoa, whoa. One at a time.

Q No - on - on - but is that distinguishable by territory? That's the question.

MR. ERELI: That was a pretty comprehensive statement, and I think what the secretary said is consistent with what U.S. officials have said previously.

Q But can't you just answer the question? Has this policy changed? That's what we're trying to find out. Has this policy - from the secretary's comments -

MR. ERELI: From what?

Q - from - on torture, on -

MR. ERELI: Has it changed from what?

Q Has it changed from before? In other words -

MR. ERELI: U.S. - U.S. policy has always been we don't conduct torture. Now - and we don't condone torture. And, as I said before, there has been discussion and debate about how you adapt norms to the situation at hand. That debate has obviously covered some of the issue

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that you're raising. But having not having been in all those debates, not having been in all those discussions, I can't tell you: At this date, there was this decided; at that date, there was that decided; et cetera, et cetera because it's -

Q Well, you could -

MR. ERELI: - but I can tell you that the policy has always been, A, that we abide by U.S. law and our international obligations; B, that that includes torture and the Convention Against Torture; and, C, that the formulation as expressed by the secretary of State today is existing policy; and, finally, that's as much as I can do for you.

Q So I think you answered my question. So in other words, the convention applied to those suspects who are being held abroad, not in America?

MR. ERELI: It applies to -

Q It applied.

Q Always.

MR. ERELI: Look, the secretary said what the policy is. I'll leave it at that.

Q So under the - (inaudible) - just made, let me ask that.

Q Adam, a quick question -

MR. ERELI: No. This gentleman.

Q Under the convention, practices being used in Guantanamo, for example, such as water boarding - that we all have heard about - is banned. So if you say the U.S. has adopted in the past, even last week, this Convention Against Torture, it would imply that all that - those practices would have been illegal.

MR. ERELI: I'm not going to speak to allegations of specific treatment. I will say that the United States and officials of the United States and employees of the United States are subject to and act according with U.S. law and our agreements under the - our international agreements including the Convention against Torture.

Q Just one more on that. But the U.N. Convention on Torture doesn't specifically - without you speaking to any one specific act - the convention itself doesn't lay out any specific acts. So is there a list that you follow that's kind of an addendum to the Convention on Torture or a list that you have of specific acts that you're prohibited against?

MR. ERELI: I don't know.

Yeah?

Q A quick question on this. I mean, I know you don't want to get into timelines, but was the secretary's comments today necessitated to clarify, to restate potential misunderstandings or misstatements that are being made about her comments - about her statement on Monday; that - some people thought that a loophole may have applied, may have opened because they were reading into her fully vetted statement on Monday? Is this what necessitated, potentially, her comments today?

MR. ERELI: There's - requests for - this was in response to questions. We felt that there was a need to answer those questions, and that's why the secretary said what she said.

Q So there's a causal effect, then, because - I mean, I know there it was a question -

MR. ERELI: And the answer's the -

Q - it was an answer to a direct question and on the road. But I mean, obviously, there had been some consideration given to the fact that she - that we needed to get out to clarify something that potentially had been omitted or something that other, let's say, newspapers were misinterpreting.

MR. ERELI: Again, we want to - as I said before, there's a good and honest and well-

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intentioned debate, and we want to contribute to that debate. And we want to help the American people and those everywhere with interest in this issue to understand why we do what we do and what principles we're guarded by. And I think there's a lot of misunderstanding based on an incomplete - a lot of misunderstandings based on incomplete consideration of what's out there. So that's what we're - that's what's behind our attempt to let it out.

Yeah?

Q You said there's incomplete consideration of what's happening. But don't you think there's been an incomplete - at least until this point -

MR. ERELI: Yeah. Yeah.

Q - I mean, do you think that - that it's an incomplete consideration because there's been an incomplete explanation?

MR. ERELI: It's obviously, as I said before, an ongoing process, an ongoing process of discussion and adaptation. So, you know, it's something that evolves. It's not an issue that's going to be fully answered today, I mean, because there are going to be, again, new developments, new threats, new actions that people will want to understand, people will evaluate in the light of what's been done in the past. I mean, that's the spirit in which we're coming - that's the spirit in which we're engaging on this.

Q You said that you're engaged in a struggle with a new kind of enemy outside the norms and practices, that that enemy is not following the regular norms and practices, and you've never been faced with dealing with an enemy of this nature before within the context of your own norms, practices and obligations. Is there a move in this administration to reinterpret your obligations to these treaties and international law when faced with an enemy that's not necessarily acting within the bounds of the obligations that you adhere to?

MR. ERELI: I think what we're trying to do and what we've been trying to do from the beginning is to both confront and defeat an enemy and to do it consistent with our laws and our - both domestic and international, because in the struggle, we're never forgetting that we are a nation of law, that we are governed by the rule of law and that we are answerable to the law. And I think that is a fundamental principle that guides us in our discussions and assessments of what is necessary and appropriate, all the while bearing in mind that it's important to do everything we can to protect the American citizens.

Q But the difference - I'm sorry, one more on this. But the difference with Europe is that they feel that no matter who the enemy is, you need to follow the parameters of international norms and obligations that you've all signed on to.

MR. ERELI: I know. And we're saying the same thing. We're saying the same thing.

Q No matter who the enemy is.

MR. ERELI: We're saying that we've got a new enemy, it poses unprecedented challenges, and that we are going to meet those challenges consistent with our laws and international obligations.

Q You said more than that. And you said and we'll have to adapt our norms to meet these unforeseen -

MR. ERELI: Well, that is -

Q "Adapt" means to fiddle with. It means to refine.

MR. ERELI: Adapt, interpret -

Q There are people who think the First Amendment ought to be sort of refined every now and then. Then there were a few lonely people, like William Douglas and Hugo Black, who thought that the First Amendment meant what it said. Okay?

Now, if the Convention on Torture means explicitly what it says, or if it's something that can be adapted to changing and unforeseen and, you know, awful, terrible enemies, then

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that's your rationale for changing your behavior.

MR. ERELI: I think that any lawyer or legal scholar would tell you that the law is organic and dynamic.

Q No, the First Amendment isn't organic and dynamic.

Q I have a question - a question about Masri. There's a report circulating in Germany that U.S. officials are negotiating with German officials about a package of compensation measures. Can you -

MR. ERELI: Don't know anything about that, and I would also note that, you know, this is a matter that is obviously the subject of legal action. So -

Q Okay. Well, okay. Then -

MR. ERELI: - of course there are constraints what can be said.

Q Okay. The follow-up question: the secretary has said that if mistakes were made, that she would - or that the United States would rectify them.

MR. ERELI: Take actions to rectify. Mm-hmm.

Q Right. Okay. Does rectification include people who were wrongly abducted and imprisoned and abused, that they should be compensated?

MR. ERELI: Well, I don't want to engage in hypotheticals. I think that the point the secretary made is - is - is fairly clear, that we believe it's important to correct our mistakes.

Q So you're saying a mistake was made?

MR. ERELI: Pardon?

Q You said it is important for us to -

MR. ERELI: Correct our mistakes.

Q - correct our mistakes. So then you're saying that it was a mistake -

MR. ERELI: I'm not speaking about any case in specific, or specific circumstances. I'm saying that as a general matter -

Q Well, he - (inaudible) -

MR. ERELI: Yeah. And I'm not speaking to specifics. I'm just saying -

Q You're not answering the question, then?

MR. ERELI: (Laughs.) To the degree that he's asking about a specific case and I'm not talking about specifics, I guess you could say I'm not answering his question, yes.

Q Can I move on?

Q (Inaudible.)

Q Yeah, exactly.

Q One - one more question on this topic?

Q Okay, Jonathan.

Q Is that all right?

Q Go ahead. ONE more.

Q You sort of - the Department of Defense has issued a statement about access to

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prisoners, saying that the International Red Cross has access to all prisoners being held on Department of Defense property, prisons, whatever. Clearly, Europe wants reassurances about the treatment of all prisoners, not just those being abducted by the Department of Defense, but also by the CIA. Can you now give reassurances, because the speculation about secret prisons continues, that the International Red Cross has access to all prisoners, not just those being held by the Department of Defense?

MR. ERELI: Yes. Yeah. Yeah. Yeah, I'm not prepared to - I'm not prepared to speak to that. I'll leave it at that.

Q But, then, that's just going to - you know, I mean, why not? It's just - it - that's the reassurance -

MR. ERELI: I think, again, as the secretary made clear in the - in her - again, in her statement on Monday, there are certain activities because of the nature, because of the intelligence, that we're just not going to talk about, and - beyond saying that we will act in accordance with the law, with our international obligations, and respecting the sovereignty of our partners.

Q But their reports are confidential. Why wouldn't you let them do what you're doing if it's completely legal?

MR. ERELI: I think I've said what I can say on the subject.

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